

§ 1208.43

7 CFR Ch. XI (1–1–01Edition)

among such other matters as may be required, provide that:

(1) The contracting or agreeing party shall develop and submit to the Council a plan or project, together with a budget that includes the estimated costs to be incurred for the plan or project;

(2) The plan or project shall become effective on the approval of the Secretary; and

(3) The contracting or agreeing party shall:

(i) Keep accurate records of all of the transactions of the party;

(ii) Account for funds received and expenses;

(iii) Make periodic reports to the Council of activities conducted; and

(iv) Make such other reports as the Council or the Secretary may require.

(d) The Council, from time to time, may seek advice from and consult with experts from the production, import, wholesale, and retail segments of the cut flowers and greens industry to assist in the development of promotion, consumer information, and related research plans and projects. For these purposes, the Council may appoint special committees composed of persons other than Council members. A committee so appointed may not provide advice or recommendations to a representative of an agency, or an officer, of the Federal Government, and shall consult directly with the Council.

§ 1208.43 Other contracts and agreements.

The Council may enter into contracts or agreements for administrative services, including contracts of employment, as may be required to conduct its business in accordance with such fiscal period budgets as may have been approved by the Secretary. To the extent appropriate to the contract involved, contracts entered into by the Council under the authority of this section shall contain provisions comparable to those described in § 1208.42(c).

ASSESSMENTS

§ 1208.50 Assessments.

(a) Each qualified handler, as defined in § 1208.16, shall pay to the Council an assessment in an amount determined

in accordance with this subpart, on each sale of cut flowers and greens to a retailer or an exempt handler (as defined in § 1208.8) and on each non-sale transfer of cut flowers and greens to a retailer by a qualified handler that is a distribution center; as well as each direct sale of cut flowers and greens to a consumer by a producer that is a qualified handler, or by an importer that is a qualified handler. Such assessments shall be remitted by each qualified handler to the Council or its agent within 60 days after the end of the month in which the sale or non-sale transfer subject to assessment under this subpart took place. Such assessments shall be paid at the following rates:

(1) During the first three years after December 29, 1994.

(i) Except as provided in paragraph (a)(1)(ii) of this section, the rate shall be one-half of 1 (0.5) percent of the gross sales price of the cut flowers and greens sold;

(ii) In the case of non-sale transfers to a retailer by a qualified handler that is a distribution center and in the case of direct sales by importers or producers, the rate shall be one-half of 1 (0.5) percent of the amount of each transaction's valuation for assessment as provided in paragraph (b);

(2) After the first three years from December 29, 1994, the uniform assessment rate may be increased or decreased annually by not more than one-quarter of 1 (0.25) percent of the gross sales price of a product sold; or in the case of other transactions the amount of such transactions, except that the assessment rate may not exceed 1 percent of the gross sales price or the transaction amount. Changes in the rate of assessment may only be made if such changes are adopted by a two-thirds majority vote of the Council and approved by the Secretary (after public notice and opportunity for comment as provided in the Act) as being necessary to carry out the objectives of the Act. Any such change so approved by the Secretary may be put into effect without a referendum but shall be announced not less than 30 days prior to the beginning of a fiscal year.

(b) Each non-sale transfer of cut flowers and greens to a retailer from a

Agricultural Marketing Service, USDA

§ 1208.52

qualified handler that is a distribution center shall be treated as a sale of cut flowers and greens to a retailer and shall be assessable. Each direct sale of cut flowers and greens to a consumer by a producer who is a qualified handler or an importer who is a qualified handler shall be assessable. These transactions shall be determined to have the following valuations for assessment purposes:

(1) In the case of a non-sale transfer of cut flowers and greens from a distribution center that is a qualified handler and each direct sale of cut flowers and greens to a consumer by an importer that is a qualified handler, the amount of the valuation of the cut flowers and greens for assessment purposes shall be the price paid by the distribution center or importer to acquire the cut flowers and greens, and determined by multiplying the acquisition price by a uniform factor of 1.43 to represent the markup of a wholesale handler on a sale to a retailer.

(2) In the case of a direct sale to a consumer by a producer who is a qualified handler, the valuation of the cut flowers and greens for assessment purposes shall be equal to an amount determined by multiplying the price paid by the consumer by a uniform factor of 0.50 to represent the cost of producing the article and the markup of a wholesale handler on a sale to a retailer.

(3) The Council may consider and adopt changes in the uniform factors specified in paragraphs (b) (1) and (2) of this section. Any such change shall not become effective until it has been adopted by a majority vote of the Council and approved by the Secretary after public notice and opportunity to comment on such change as provided in the Act. Changes so adopted and approved shall become effective at the beginning of the next fiscal year.

(c) The collection of assessments shall commence on or after a date established by the Secretary, and shall continue until terminated by the Secretary. If the Council is not constituted on the date the first assessments are to be remitted, the Secretary shall have the authority to receive assessments on behalf of the Council and may hold such assessments in an interest bearing account until

the Council is constituted, and the funds may be transferred to the Council.

(d) Assessments shall be determined on the basis of the gross sales price. The Council, with the approval of the Secretary, may make uniform adjustments in determining the gross sales price when such adjustments reflect changes in trade practices or ensure equitable treatment of all qualified handlers paying assessments.

(e) No assessments may be levied on any sale of cut flowers and greens for export from the United States. The Council is authorized to establish procedures for the verification of exports.

(f) In general, assessment funds (less refunds, if any) shall be used:

(1) For payment of costs incurred in implementing and administering this subpart;

(2) To provide for a reasonable reserve to be maintained from assessments to be available for contingencies; and

(3) To cover the administrative costs incurred by the Secretary in implementing and administering this Act.

NOTE TO §1208.50: The requirement to pay assessments is terminated as of July 29, 1997.

[59 FR 67143, Dec. 29, 1994, as amended at 62 FR 40257, July 28, 1997]

§ 1208.51 Influencing governmental action.

No funds collected by the Council shall in any manner be used for the purpose of influencing legislation or government action or policy, except to develop and recommend to the Secretary amendments to this subpart.

§ 1208.52 Charges for late payments.

Any assessment due the Council pursuant to §1208.50 that is not paid on time shall be increased 1.5 percent each month it remains unpaid beginning with the day following the date such assessment was due. If not paid in full, any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment that was determined at a date later than prescribed by this subpart because of a